

**Proposed Amendments to California Code of Regulations, Title 5
Sections 80300, 80303, 80307, 80310 and 80412
Pertaining to the Committee of Credentials**

Notice of Proposed Rulemaking

The California Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed action.

Public Hearing

A public hearing on the proposed actions will be held:

December 1, 2004
9:30 a.m.
California Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, California 95814

Oral comments on the proposed action will be taken at the public hearing. We would appreciate 14 days advance notice in order to schedule sufficient time on the agenda for all speakers. Please contact Kim Hunter at (916) 445-0243 if you wish to provide oral comments. Any person wishing to submit written comments at the public hearing may do so. It is requested, but not required, that persons submitting such comments provide fifty copies to be distributed to the commission and interested members of the public. All written statements submitted at the hearing will, however, be given full consideration regardless of the number of copies submitted.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on November 24, 2004. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 323-6735; write to the California Commission on Teacher Credentialing, attn. Kim Hunter, 1900 Capitol Avenue, Sacramento, California 95814; or submit an email to KHunter@ctc.ca.gov.

Any written comments received 14 days prior to the public hearing will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda presented to the full Commission at the hearing.

Authority and Reference

Education Code section 44225 (q) authorizes the Commission to promulgate rules and regulations.

Informative Digest/Policy Statement Overview

Summary of Existing Laws and Regulations

Staff is proposing modifications to existing regulations made necessary as a result of the enactment of legislation (SB 299, Chap. 342, Stats. 2001) and an appellate decision (*Cross v. CTC*, et al., 111 Cal. App. 4th 1001 (2003)).

Additional proposed changes make technical and clarifying corrections and provide cost-saving procedures.

New Law: The Commission sponsored Senate Bill 299 (Chapter 342, Stats. 2001) which, among other things, revised Education Code section 44002 to clarify that the definition of “credential” includes a certificate of clearance and a waiver. The definition of “credential” in section 80300(g) has been revised to include certificates of clearance and waivers as part of the definition of “credential” in order to align the regulation with current law.

SB 299 also clarified the circumstances under which the Committee of Credentials may commence an investigation. Currently, the Committee may commence an investigation under specified circumstances, including, but not limited to, notice from the employer of a credential holder that the credential holder has been suspended for more than 10 days, or has otherwise left employment because of an allegation of misconduct. SB 299 clarified that the Committee may initiate an investigation if a credential holder was placed on unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending. In order to align the regulation with current law, section 80303 has been revised to include unpaid administrative leave for more than 10 days or for any other departure of the employee while allegations of misconduct are pending as a basis for the Commission to initiate an investigation.

Appellate Court Decision: Section 80307 currently allows credential holders and applicants, following commencement of an investigation, to discover copies of all writings in their file, unless privileged, without redaction. Under the Information Practices Act, personal information disseminated by a state agency is limited. In *Cross v. CTC*, et al., 111 Cal.App.4th 1001 (2003) the court held that section 80307 is invalid as it is overbroad and in conflict with the IPA.

Education Code section 44244, subdivision (a), requires disclosure of the "...portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection or copying..." Disclosure is limited to the basis of the allegations of misconduct, and does not mandate that "all writings" be discovered, as section 80307 currently requires.

Since section 80307 requires that "all writings" be disclosed, the court found that section 80307 conflicts with the IPA by requiring disclosure of personal information in a credential holder's file that is not necessary to carry out the Commission's duties under Education Code section 44244. Section 80307 has been revised to reflect the court's finding that it conform to Education Code section 44244 and the IPA.

Technical Changes: Section 80300 includes definitions of various terms, with subsection (k) defining "formal review" as "a meeting or hearing held pursuant to Education Code section 44244." Since Education Code section 44244 does not authorize a hearing, this regulation has been revised to reflect the law.

Section 80303 requires the Committee to investigate any superintendent who fails to file reports under this section. This language has been revised to allow the Committee of Credentials to investigate the more egregious violations, and not mandate the investigation of technical violations, such as failing to file the reports within 30 days.

Section 80310 currently states that meeting notices, also known as formal review, will be sent via certified mail, return receipt requested. Education Code section 44244 requires notification by registered mail when the Committee of Credentials has made a recommendation and does not require special mailing procedures at other times. The Commission could send meeting notifications via regular mail, and still be in compliance with the Education Code. The California Code of Civil Procedure, section 1013(a), codifies the sending of notices by regular mail and is followed by other states, as well as by the federal government. Section 80310 has been revised to allow implementation of a valid form of legal notification that will result in substantial savings in postage and labor costs to the Commission. This change will result in a savings of approximately \$3,000 per year.

Currently, section 80310 states that meeting notices will be sent to the address of record. It is the responsibility of the credential holder or applicant to notify the Commission of any change of address. At times, Commission staff can obtain the last known address via Department of Motor Vehicle or court records, or through other means. In order to help ensure meeting notices are received in a timely manner, section 80310

has been revised to allow the Commission, in its discretion, to send meeting notices to the last known address, as well as to the address of record. Section 80310 has also been amended to include a reminder to credential holders and applicants that it is their responsibility to keep address records up to date.

Section 80310 currently states that the notice of the Committee of Credentials' recommendation and the Confidential Investigative Report shall be sent to all known employers. Pursuant to Education Code section 44242.5(e) (2), this section has been amended to indicate that the recommendation and report shall be sent to all known educational employers only.

Section 80412 refers to the "Commission for Teacher Preparation and Licensing" and lists an outdated address for the Commission. This section has been revised to reflect the Commission's current name. In keeping with other state agency-promulgated regulations, the Commission's address will not be listed in the regulation.

Summary of Proposed Changes

Section 80300: Staff is proposing that the definition of "credential" be expanded to include certificates of clearance and waivers, and to delete the improper term "hearing" from the definition of "formal review."

Section 80303: Staff is proposing that the regulation be changed to clarify when the Committee of Credentials may commence an investigation upon notice from the employer of a credential holder that there has been a change in employment status while allegations of misconduct are pending, and to make investigations of reporting violations discretionary, instead of mandatory.

Section 80307: Staff is proposing that the scope of disclosure of information while an investigation is in progress be defined.

Section 80310: Staff is proposing that the regulation be changed to allow meeting notices to be sent via regular mail rather than certified mail, return receipt requested. Staff is also proposing that the regulation be changed to clarify that the notice of the Committee of Credentials recommendation and Confidential Investigative Report will be sent to all known educational employers, not all employers.

Section 80412: Staff is proposing that the regulations be updated with the Commission's current name and that the outdated address be deleted.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations: None.

Disclosures Regarding the Proposed Actions

The Commission has made the following initial determinations:

Mandate to local agencies or school districts: None.

Other non-discretionary costs or savings imposed upon local agencies: None.

Cost or savings to any state agency: Commission savings of approximately \$3,000 on a yearly basis.

Significant effect on housing costs: None.

Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 175900) of the Government Code.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment regarding the creation or elimination of jobs in California (Government Code section 11345.3(b)): The Commission has made an assessment that the proposed amendments to the regulation would not (1) create nor eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not affect small businesses. The proposed amendments to Title 5, California Code of Regulations, only impact the way that the Commission on Teacher Credentialing imposes discipline on credential holders. Thus, there is no impact on small businesses.

Consideration of Alternatives

The Commission must determinate that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected

private persons or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

Contact Person/Further Information

General or substantive inquiries concerning the proposed action may be directed to Kim Hunter by telephone at (916) 445-0243 or in writing to Kim Hunter, California Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95814. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission's website at www.ctc.ca.gov. In addition, all of the information on which this proposal is based is available for inspection and copying.

Availability of Statement of Reasons and Text of Proposed Regulations

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

Modification of Proposed Action

If the Commission proposes to modify the actions hereby proposed, the modifications (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

Availability of Final Statement of Reasons

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's website at www.ctc.ca.gov or a copy may be obtained by contacting Kim Hunter at (916) 445-0243.

Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout format can be accessed through the Commission's website at www.ctc.ca.gov.